

**CROOK COUNTY WORK SESSION**  
**Crook County Annex - Meeting Room**  
**320 NE Court Street, Prineville, OR**  
**Tuesday July 28, 2020 at 9a.m.**

*Items placed on the Work Session agenda are intended for discussion only, without making decisions or finalizing documents unless an emergency exists.*

**Discussion Items**

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs? ✓</i>
1	Muriel	COVID-19 Update	
2	Ann Beier/John Eisler	Solar Projects Overview, Presentation, Background, & Discussion	✓
3	Colleen/Jerry/Eric	PLA 1 – Lack of Road District Board Members	✓
4	Brian Barney	Appropriation of Funds for Phase 1 of Justice Center and Process (RFP; Architect Interviews, etc.)	

**Executive Discussion Items**

	<i>Requester's Name</i>	<i>Matter</i>	<i>Docs? ✓</i>
Exec #1	Brian Barney	ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate <b>real property transactions</b>	
Exec #2	Eric Blaine	ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate <b>real property transactions</b>	
Exec #3	Eric Blaine	ORS 192.660(2)(h) Consulting with Counsel concerning the legal rights and duties of a public body with regard to current <b>litigation or litigation likely to be filed</b>	✓

***Please provide advance notice for assistance to handicapped individuals by contacting the County Administration Office at 447-6555.***

*\*The Court may add additional items arising too late to be part of this Agenda. Agenda items may be rearranged to make the best use of time.*

*\*The meeting location is accessible to persons with disabilities. If additional accommodations are required, please submit your request by contacting County Administration at 541-447-6555.*

*Requests to be placed on the Work Session agenda are due at 5 p.m. on Thursday before the Work Session*

**July 28, 2020 Work Session Agenda Items**

# Crook County Legal Counsel

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## MEMO

For Work Session  
July 28, 2020

TO: Crook County Court

FROM: John Eisler, Crook County Legal Counsel's Office

DATE: July 23, 2020

RE: *Solar Energy Facilities on EFU Land*  
Our File No.: Comm. Dev. 54

The County Court has two upcoming land use appeals regarding solar energy facilities on its docket. Without discussing the facts of either case, I thought it would be helpful to provide a brief primer on the state of the law for siting solar energy facilities on EFU land in Oregon.

Last year the Oregon Legislature passed HB 2329, which allows counties to authorize siting larger solar energy facilities without requiring an Energy Facility Siting Council (EFSC) site certificate. However, such HB 2329 projects must be approved through a slightly different process than smaller, non-HB 2329 projects.

### 1. *Siting under CCC 18.16.060(3); 18.161*

These are the County Code provisions for solar energy facilities that were in effect before HB 2329 and that apply to all commercial applications for a solar energy facility on EFU land. As briefly as I can, I'll try to summarize the provisions.

#### A. 18.16.060(3)

The section begins with definitions for arable and nonarable land and soils, and follows with separate tests depending on the classification. "Nonarable land" is that which is predominately not cultivated and predominately composed of nonarable soils, which are Class V – VIII with no history of irrigation. For such nonarable lands, the solar energy facility cannot "preclude more than 320 acres from use as a commercial agricultural enterprise" unless an exception to the county's comprehensive plan is taken (The DCLD's administrative rules say that the solar energy facility "shall not use, occupy, or cover more than 320 acres." OAR 660-033-0130(38)(j). Our CCC language of not precluding "more than 320 acres from use as a *commercial agricultural enterprise*" is taken straight from the DLCD's model code language).

Mitigation is an important part of this statute. If the subject property either contains a mapped Goal 5 resource (natural resources, scenic and historic areas, and open spaces) or is located on lands potentially adversely affecting species of concern on the Oregon Department of Fish and Wildlife's (ODFW) maps, the applicant must consult with the relevant state/federal agencies responsible for

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protecting the resource and cooperatively develop a specific resource management plan to mitigate possible development impacts. In either case, if the applicant and state/federal agency cannot agree on a mitigation plan, “the county is responsible for determining appropriate mitigation measures.”

The rest of the section has provisions requiring a non-remonstrance deed, allows the requirement of a bond, and directs to 18.161.010.

#### **B. 18.161.010**

This section lists the criteria for commercial power generating facilities. For solar projects, it describes the application requirements, criteria, amendments, and decommissioning. The application requirements include: construction schedule, maps, transmission interconnection; identification of potential conflicts with county resources; a transportation impact analysis; wildlife monitoring plan; emergency management plan; erosion and weed control plans; information on the impact to water and wildlife; a decommissioning plan; and a socioeconomic assessment.

The criteria cover areas including setbacks, identification of how to protect resources; a design that reduces the likelihood of significant adverse effects on wildlife and habitat; misdirection of solar radiation; public safety measures; a non-remonstrance deed; road access agreement; decommissioning plan and security agreement; annual report; and more.

The remainder of the section describes the rules for amendments and the details of the decommissioning plan.

#### **2. *Siting under HB 2329 (ORS 215.446)***

As mentioned above, HB 2329 allows projects on nonarable land/soils up to 1,920 acres, now defined as a “renewable energy facility.” In addition to satisfying 18.16.060(3) & 18.161.010, the applicant must:

- (1) consult with ODFW prior to submitting the final application regarding wildlife impact and any mitigation plan, if necessary (with no mention of a county’s mapped resources);
- (2) conduct a habitat assessment of the proposed site;
- (3) develop a mitigation plan to address significant wildlife impacts consistent with ODFW administrative rules;
- (4) demonstrate no adverse effects to historic, cultural, and archaeological resources;
- (5) demonstrate that the property can be restored following its useful life;
- (6) meet any EFSC standards the county determines are applicable; and
- (7) provide financial assurances.

The section also allows the applicant to enter into a cost reimbursement agreement administered by the county with the ODFW, SHPO, or DoE to receive comments. The section also requires the county to deliver notice, with certain requirements, to the above agencies, as well as the ODA (aviation) and US Dept. of Defense and any federally recognized Indian tribe affected by the application. Curiously, unlike our 18.16.060(3), the statute is silent as to what to do if the applicant and ODFW cannot agree to a mitigation plan.

# Solar Projects in Crook County

Activity to Date

# Solar Projects in Crook County

- Eleven Projects permitted to date
  - One constructed – 50 + MW Gala Project – west of Millican (Avangrid)
  - Two under construction – 60 MW Millican and 50 MW Prineville projects  
(Invenergy – project with PacifiCorp and Facebook) – east of Millican/south of Apple (approximately 720 acres total)
  - Six additional projects permitted
  - Two additional applications approved by Planning Commission and subject to DLCD and ODFW appeal

# Why Crook County?

- Transmission infrastructure (1 Bonneville Power and 3 PacifiCorp substations within easy access – two additional PacifiCorp substations under construction)
- Demand for “green energy” by data centers
- Available land with minimal conflicts – poor soils and lack of irrigation water make area generally unsuitable for crop production and low forage value.
- Limited conflict with mapped big game habitat

# Siting energy facilities in Oregon

- Large facilities subject to review by Oregon Energy Facility Siting Council (historically – solar projects of more than 320 acres)
  - 2019 House Bill 2329 allows local governments to review projects up to 1920 acres subject to certain conditions
- Smaller facilities (< 320 acres) subject to local review
- Oregon land use law allows local governments to site facilities on up to 320 acres. If more than 320 acres, an “exception” to Statewide planning goal 3 (Farmland protection) is required

# General land use review standards

- Commercial solar facilities are conditional uses in the County's exclusive farm use zones
- Apply state provisions (Oregon Administrative Rules) and County Code
- Crook County has specific standards for siting renewable energy projects – adopted in 2010. These address a range of issues from weed control to emergency management to bonding for site reclamation.
- County also applies general conditional use standards to assess impacts on area property owners



## State law – Oregon land use law

- Oregon land use law allows local governments to site a commercial solar facility on up to 320 acres of “non-arable” land (non-irrigated and soils with Natural Resource Conservation Service Classification of Class V-VIII).
- Must identify and make findings if mapped habitat or other natural resources on site – mitigation likely required

# House Bill 2329 standards

- House Bill 2329 (2019 legislature – effective January 1, 2020)
  - Allows local governments to site commercial solar projects on up to 1920 acres
  - Requires notification of select State agencies (Oregon Department of Fish and Wildlife, State Historic Preservation Office, U.S. Military and area Tribal governments)
    - Supported by industry and local governments

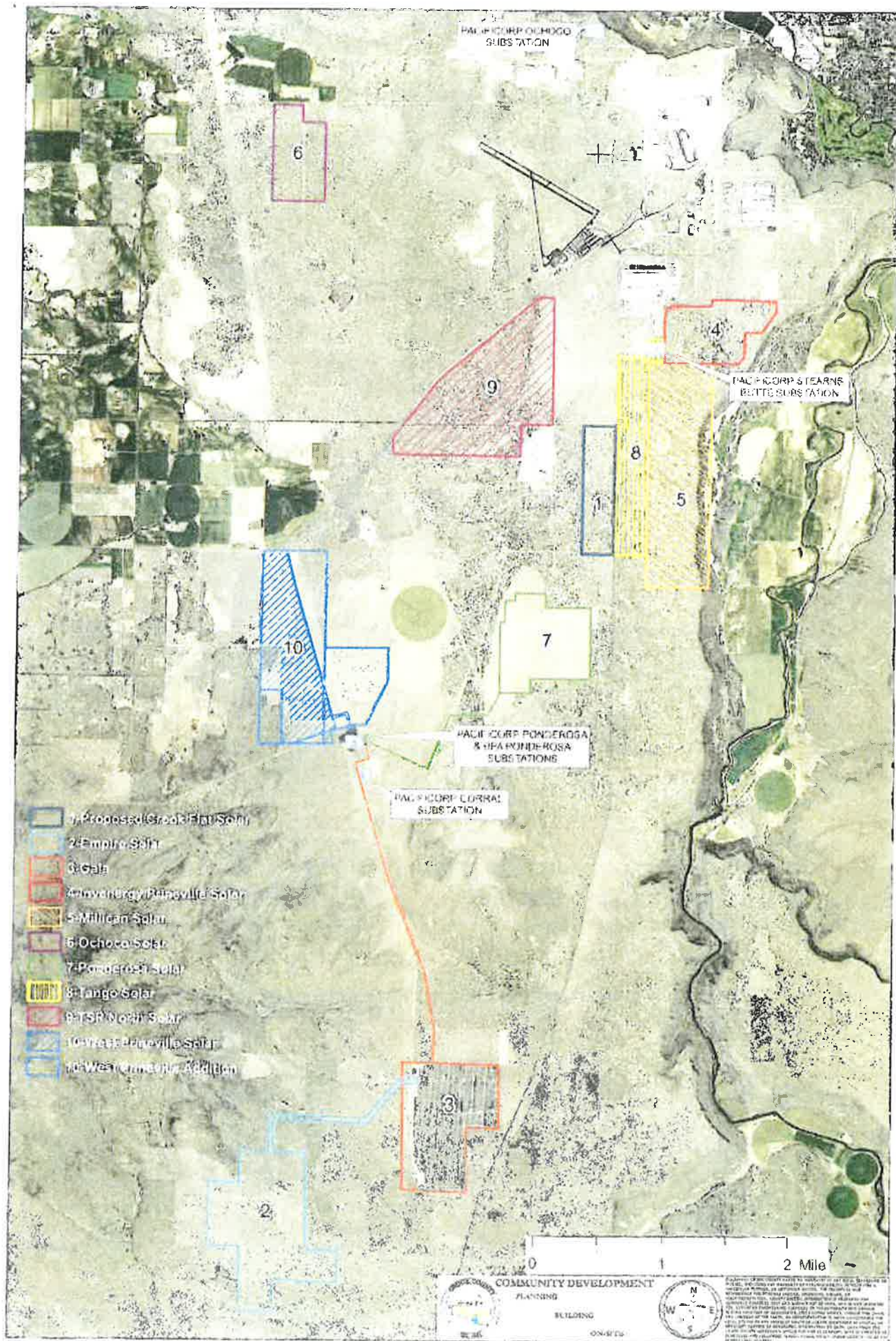
# Appeals

- Two projects – two different standards
  - Crook Flat – 160 acres just west of Millican (across from permitted Tango site)
    - Only issue is proposed wildlife mitigation proposal
    - Only legal review standard is in County Code (mirroring Oregon Administrative rules)
    - The County has not adopted maps regarding pronghorn (antelope habitat)
    - ODFW has asked for mitigation based on their maps; mitigation required for the Tango project and Millican project)

# Appeals

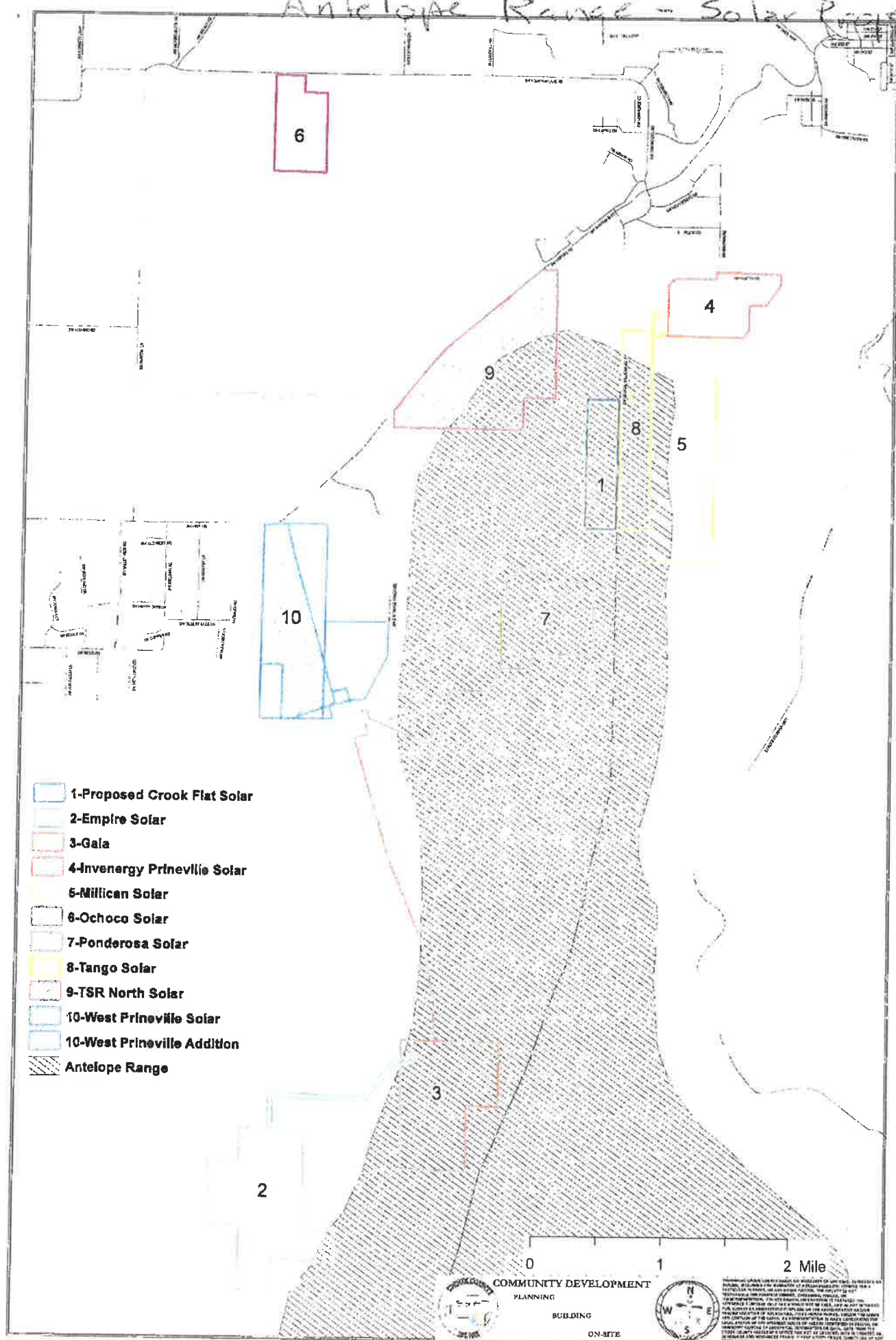
- West Prineville Solar Modification
  - Original project approved in 2019
  - Modification is expansion of current project and provisions of House Bill 2329 apply
  - No mapped wildlife habitat on site (neither County nor ODFW)







# Antelope Range - Solar Projects



- 1-Proposed Crook Flat Solar
- 2-Empire Solar
- 3-Gala
- 4-Invenenergy Prineville Solar
- 5-Millican Solar
- 6-Ochoco Solar
- 7-Ponderosa Solar
- 8-Tango Solar
- 9-TSR North Solar
- 10-West Prineville Solar
- 10-West Prineville Addition
- Antelope Range













CROOK COUNTY  
COMMUNITY DEVELOPMENT  
PLANNING  
BUILDING  
ON-SITE



0 1 2 Mile

# General Deer Winter Range

-  Proposed Crook Flat Solar
-  Empire Solar
-  Gala
-  Invenergy Prineville Solar
-  Millican Solar
-  Ochoco Solar
-  Ponderosa Solar
-  Tango Solar
-  TSR North Solar
-  West Prineville Solar
-  West Prineville Addition

## Range Type

-  Deer Critical Winter Range
-  Deer Winter Range

0 1 2 Mile



COMMUNITY DEVELOPMENT  
PLANNING

BUILDING

ON-SITE



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# Crook County Legal Counsel

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Physical: 267 NE 2<sup>nd</sup> St., Ste 200, Prineville, OR 97754 • Fax: 541-447-6705



## MEMO

TO: Crook County Court

FROM: Crook County Legal Counsel's Office

DATE: July 24, 2020

RE: Questions regarding special district boards and dissolution  
Our File No.: Districts # 11 Misc.

We have been informed that a local special district is experiencing chronic difficulties maintaining its three-person board. They have asked the County a series of questions: how might vacancies on the district board be filled, whether the County Court could take over the management of the district tax revenue, and whether the district would need to dissolve.

The short answers are:

- A majority of the board can fill vacancies, or if that doesn't happen, the County Court can fill the vacancies.
- The County Court cannot take over the management of the district.
- If new board members cannot be found and appointed, then the district probably should dissolve.

Here are the long answers:

### **Vacancies.**

Under ORS 236.010, a public office (like a board member of a special district) is vacant "before the expiration of the term if:

- (a) The incumbent dies, resigns or is removed.
  - (b) The incumbent ceases to be an inhabitant of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office of the incumbent are required to be discharged.
  - (c) The incumbent is convicted of an infamous crime, or any offense involving the violation of the oath of the incumbent.
  - (d) The incumbent refuses or neglects to take the oath of office, or to give or renew the official bond of the incumbent, or to deposit such oath or bond within the time prescribed by law.
  - (e) The election or appointment of the incumbent is declared void by a competent tribunal.
- 3



(f) The incumbent is found to be a person with a mental illness by the decision of a competent tribunal.

(g) The incumbent ceases to possess any other qualification required for election or appointment to such office.

Under ORS 198.320, the vacancies can be filled by a majority of the board, or, if there is no majority or they can't agree, by the County Court.

### **County management of district.**

The call Colleen received today stated "We want to discuss if the County Court could take over the taxing district to distribute appropriately the taxing dollars for road maintenance, or does the District have to disband."

I don't see any authority for the County Court to just take over the management of the district – I suppose the three commissioners could just appoint themselves as board members if there were three vacancies, but to my knowledge none of you live in PLA 1, so even that isn't an option. The principle of special districts is that they allow local residents to resolve local problems, and to assess taxes as those local residents may determine best suit their collective needs. The County Court would be without authority to oversee the district's activities, and I would counsel against the County Court becoming a "subcontractor" of a local district.

### **Dissolution of the district.**

If there aren't enough people willing to serve on the district board, and the board isn't able to subcontract day-to-day management to someone like COIC, then maybe it is a good idea that it dissolve.

There are two ways that a district might be dissolved: inactivity or by petition.

#### *Inactivity.*

There are a series of statutes which describe how an inactive district is dissolved: ORS 198.335 to .365. They state that if, after three years, financial records are not filed as required by law, then the Secretary of State or Department of Revenue may contact the local County Court. The Court then has 30 days to initiate dissolution proceedings. Within 60 days of receiving the State's notice, the County Court has to provide a financial statement of the district's assets and liabilities.

A public hearing is thereafter held, to determine whether to dissolve the district, or to have it continue.

If the vote is to dissolve the district for being inactive, then things get tricky. The County Court is automatically established as a board of trustees for paying the debts and disposing of the property of the district. If there's a surplus (which there won't

be), it goes into the general fund. If there is a deficiency, then the County Court “shall levy taxes [on the district properties], within the limits of the authority of the district, for the liquidation of the debts.”

These statutes don’t describe what happens if that three-year period has not yet expired. Presumably, this method is simply not available.

*By Petition.*

Under ORS 198.920, the district’s own board or electors within the district may file a petition with the County Court asking that it be dissolved. The board would need to prepare a plan of liquidation and adopt findings explaining the districts assets and liabilities.

Then, the question of whether to dissolve is put up for an election by the district residents, with each elector being provided a copy of the dissolution plan and assets/liabilities list.

The County Court could declare the district dissolved even without an election, if it finds that the dissolution is in the interest of the people of the County and at least one of four additional facts:

- (1) The territory within the affected district is uninhabited;
- (2) The district has failed regularly to elect district board members in accordance with the principal Act of the district;
- (3) For a county service district, dissolution is required due to an absence of public need for continuation of the district, as provided in ORS 451.620; or
- (4) For a county service district, the district is no longer necessary for the purpose for which it was formed.

Then, the assets and liabilities of the district would be wound up. The district board would serve as trustee, unless they decide to name the County Court as trustee. While the statutes don’t make it explicit, it looks like the County Court would have to serve as trustee if there just isn’t any district board.

The trustees would then wind up the assets and liabilities. If there is any surplus, several options are available depending on the dollar value. If, however, there is a deficiency, then the trustees levy taxes on the district as described above.

**Additional Consideration**

Finally, one concern is what happens to the maintenance of the roads within the district. Some special district residents have been trying to get the County to repair and thereafter maintain their roads for years. Unfortunately, the roads are in a bad state, and any such repairs would be expensive.

The County has consistently stated that it would only consider taking over the maintenance responsibilities if the roads are first brought up to the County's road standards – this way, the other taxpayers would not subsidize the district resident.

If any particular special district is the subject of dissolution, the County Court should give due consideration of how to avoid such a subsidy from the wider county. Simply as a matter of fairness, other taxpayers should generally not be used as a backstop for those districts whose residents have allowed their interior roads to deteriorate.

7/24/2020

Crook County, Oregon

Map

## Layers

Prineville Lake Acres Road District



RD

SF

SE  
RD

LOOP

County GIS

Powered by Esri



# **PRINEVILLE LAKE ACRES UNIT #1 SPECIAL ROAD DISTRICT BOARD OF DIRECTORS 2020**

<b>Name</b>	<b>Appointment Date</b>	<b>Expiration Date</b>
<b>Position #1</b>		
Deborah K Simmons 14492 SE Gatling Way Prineville, OR 97754 541-447-6863 dkspir@yahoo.com	December 31, 2017	December 31, 2020
<b>Position #2</b>		
Suzi Flack 14727 Se Purdy Place Prineville, OR 97754 541-416-9078	12-18-2019	12-31- 22
<b>Position #3</b>		
Loren Cassidy PO Box 780 5900 SE Krag Rd Prineville, OR 97754 541-419-8689	12-31-18	12-31-21

**3 year term    Oath Required**